

# **EXHIBIT Q**

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Attorneys for HOWREY LLP

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

KENT H. ROBERTS,

Defendant.

) Case No. C-07-4580 MHP

**OBJECTIONS AND RESPONSES OF NON-PARTY HOWREY LLP TO SUBPOENA FOR THE PRODUCTION OF DOCUMENTS AND TESTIMONY**

OBJECTIONS & RESPONSES OF NON-PARTY HOWREY LLP  
TO SUBPOENA FOR DOCUMENTS AND TESTIMONY  
Case No. C-07-4580 MHP

Pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), non-party Howrey LLP ("Howrey") hereby responds to the November 2, 2007 subpoena issued by counsel for Defendant Kent H. Roberts in the above-captioned matter (the "Subpoena"). Howrey reserves the right to assert any additional objections to the Subpoena as necessary and/or appropriate.

### **GENERAL OBJECTIONS**

Howrey makes the following General Objections to the Subpoena and each of the document requests contained therein (the "Requests"), whether or not fully set forth in the specific objections to each Request.

1. Howrey generally objects to the Subpoena to the extent that it seeks information protected by any applicable privilege, immunity, or confidentiality obligation, including without limitation the attorney-client privilege, the attorney work product immunity doctrine and any legal or contractual obligation of nondisclosure to a third party. Nothing contained in these responses, or contained in any subsequently produced documents or testimony, is intended to be, or in any way constitutes, a waiver of any such privilege, immunity or confidentiality obligation. Moreover, to the extent that any Request purports to require Howrey to disclose information in violation of a legal or contractual obligation of nondisclosure to a third party, Howrey will not disclose such information without either the consent of the relevant third party or a court order compelling its production.

2. Howrey generally objects to the Subpoena to the extent that the Requests seek information that is not relevant to the subject matter involved in the action or that is not reasonably calculated to lead to the discovery of admissible evidence.

3. Howrey generally objects to the Subpoena to the extent that it seeks to impose a greater duty upon Howrey than is required by the Federal Rules of Civil Procedure, the local rules and/or applicable law.

4. Howrey generally objects to the Subpoena on the ground that the Requests are overbroad and unduly burdensome, and to the extent that they do not comply with the admonition of Federal Rule of Civil Procedure 45(c)(1) that a subpoena to a third party shall "avoid imposing undue burden or expense on a person subject to that subpoena."

7           7.     Howrey generally objects to the Subpoena to the extent that it seeks information that is  
8 not within its possession, custody or control.

11           9.       Howrey generally objects to the Subpoena to the extent that it seeks documents of a  
12 confidential or proprietary nature. No such documents shall be produced prior to entry of a Protective  
13 Order acceptable to Howrey.

## OBJECTIONS TO DEFINITIONS

12. Howrey objects to the definition of “PERSON” to the extent it includes “corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies and orders.” This definition renders the Subpoena overbroad, unduly burdensome, oppressive, vague and ambiguous; seeks information outside of Howrey’s possession, custody or control; and calls for a legal conclusion.

13. Howrey objects to the definitions of "RELATE TO," "RELATED TO" and "RELATING TO" on the ground that they are overbroad, ambiguous and unduly burdensome.

14. Howrey objects to the definition of "COMPANY" to the extent that it includes "present and former agents, principals, partners, members, employees, directors, subsidiaries, predecessors, accountants, auditors, attorneys, investigators, contractors, the board of directors and any committees thereof, and anyone else acting on its behalf, including all sister or other related corporations." This definition renders the Subpoena overbroad, unduly burdensome, oppressive, vague and ambiguous; seeks information outside of Howrey's possession, custody or control; calls for legal conclusions; and, seeks information protected by the attorney-client privilege and the attorney work product doctrine.

15. Howrey objects to the "relevant timeframe" on the ground that it is overbroad, unduly burdensome and oppressive.

#### **OBJECTIONS TO INSTRUCTIONS**

16. Howrey objects to Instruction 2 on the ground that it seeks information that is not reasonably accessible because of undue burden or cost.

#### **SPECIFIC OBJECTIONS**

##### **Request No. 1:**

ALL reports AND draft reports prepared, in whole OR in part, by YOU for the COMPANY during the time period of May 15, 2006 to the present, produced in their entirety.

##### **Response to Request No. 1:**

Howrey objects to Request No. 1 on the ground that it calls for the production of information protected by the attorney-client privilege, the attorney work product doctrine and any other applicable privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks information that is irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing general and specific objection, Howrey responds as follows: Howrey will meet and confer with counsel for Mr. Roberts to discuss the production of relevant non-privileged documents, if any, responsive to Request No. 1.

1 Request No. 2:

2 ALL DOCUMENTS, including, but not limited to, memoranda, analysis, conclusions, findings,  
3 notes, interview memoranda OR summaries prepared, in whole OR in part, by YOU in connection with  
4 ANY work performed for the COMPANY during the time period of May 15, 2006 to the present.

5 Response to Request No. 2:

6 Howrey objects to Request No. 2 on the ground that it calls for the production of information  
7 protected by the attorney-client privilege, the attorney work product doctrine and any other applicable  
8 privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks  
9 information that is irrelevant or not reasonably calculated to lead to the discovery of admissible  
10 evidence. Subject to and without waiving the foregoing general and specific objection, Howrey  
11 responds as follows: Howrey will meet and confer with counsel for Mr. Roberts to discuss the  
12 production of relevant non-privileged documents, if any, responsive to Request No. 2.

13 Request No. 3:

14 ALL COMMUNICATIONS between YOU OR the COMPANY with the Department of Justice  
15 ("DOJ"), Securities and Exchange Commission ("SEC"), OR New York Stock Exchange ("NYSE")  
16 RELATED TO stock options.

17 Response to Request No. 3:

18 Howrey objects to Request No. 3 to the extent that it seeks information that is irrelevant or not  
19 reasonably calculated to lead to the discovery of admissible evidence. Howrey further objects to this  
20 Request on the ground that it is overbroad in time and scope. Howrey also objects to this Request to  
21 the extent that it calls for the production of information protected by an applicable privilege, including  
22 the attorney-client privilege and the attorney work product doctrine. Finally, Howrey objects to this  
23 Request to the extent that it seeks documents outside of its possession, custody or control. Subject to  
24 and without waiving the foregoing general and specific objections, Howrey responds as follows:  
25 Aside from a number of emails between Howrey and the SEC or the DOJ, primarily regarding  
26 scheduling and other ministerial matters, which Howrey will produce pursuant to this Subpoena,  
27 Howrey is unaware of the existence of any other documents responsive to Request No. 3.



1 Request No. 4:

2 ALL DOCUMENTS provided by YOU OR the COMPANY to DOJ, SEC OR NYSE  
3 RELATED TO stock options.

4 Response to Request No. 4:

5 Howrey objects to Request No. 4 on the ground that it calls for the production of information  
6 protected by the attorney-client privilege, the attorney work product doctrine and any other applicable  
7 privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks  
8 information that is irrelevant or not reasonably calculated to lead to the discovery of admissible  
9 evidence. Howrey also objects to this Request on the ground that it is vague and ambiguous. Howrey  
10 further objects to this Request on the ground that it seeks information that is not reasonably accessible  
11 because of undue burden or cost. Finally, Howrey objects to this Request to the extent that it seeks  
12 documents outside of its possession, custody or control. Subject to and without waiving the foregoing  
13 general and specific objections, Howrey responds as follows: Pursuant to Instruction No. 2 of the  
14 Subpoena, Howrey will not re-produce responsive documents that have already been produced to the  
15 DOJ or the SEC. Howrey will meet and confer with counsel for Mr. Roberts to discuss the production  
16 of additional relevant non-privileged documents, if any, responsive to Request No. 4.

17 Request No. 5:

18 ALL DOCUMENTS AND COMMUNICATIONS RELATED TO Project Shield.

19 Response to Request No. 5:

20 Howrey objects to Request No. 5 on the ground that it calls for the production of information  
21 protected by the attorney-client privilege, the attorney work product doctrine and any other applicable  
22 privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks  
23 information that is irrelevant or not reasonably calculated to lead to the discovery of admissible  
24 evidence. Howrey also objects to this Request on the ground that it is vague and ambiguous. Howrey  
25 further objects to this Request on the ground that it seeks information that is not reasonably accessible  
26 because of undue burden or cost. Finally, Howrey objects to this Request to the extent that it seeks  
27 documents outside of its possession, custody or control. Subject to and without waiving the foregoing

1 general and specific objection, Howrey responds as follows: "Project Shield" is the project name for  
2 the electronic data collection and review in connection with Howrey's representation of the Special  
3 Committee of the Company's Board of Directors, and therefore this Request is unduly burdensome and  
4 overbroad in that it seeks documents that are irrelevant or not reasonably calculated to lead to the  
5 discovery of admissible evidence, and/or privileged. Pursuant to Instruction No. 2 of the Subpoena,  
6 Howrey will not re-produce responsive documents that have already been produced to the DOJ or the  
7 SEC. Howrey will meet and confer with counsel for Mr. Roberts to discuss the production of  
8 additional relevant non-privileged documents, if any, responsive to Request No. 5.

9 Request No. 6:

10 ALL DOCUMENTS AND COMMUNICATIONS RELATED TO George Samenuk.

11 Response to Request No. 6:

12 Howrey objects to Request No. 6 to the extent that it calls for the production of information  
13 protected by the attorney-client privilege, the attorney work product doctrine and any other applicable  
14 privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks  
15 information that is irrelevant or not reasonably calculated to lead to the discovery of admissible  
16 evidence. Howrey also objects to this Request on the ground that it is vague and ambiguous. Finally,  
17 Howrey objects to this Request to the extent that it seeks documents outside of its possession, custody  
18 or control. Subject to and without waiving the foregoing general and specific objections, Howrey  
19 responds as follows: Pursuant to Instruction No. 2 of the Subpoena, Howrey will not re-produce  
20 responsive documents that have already been produced to the DOJ or the SEC. Howrey will meet and  
21 confer with counsel for Mr. Roberts to discuss the production of additional relevant non-privileged  
22 documents, if any, responsive to Request No. 6.

23 Request No. 7:

24 ALL DOCUMENTS AND COMMUNICATIONS RELATED TO Sylvia Garcia-Lechelt.

25 Response to Request No. 7:

26 Howrey objects to Request No. 7 to the extent that it calls for the production of information  
27 protected by the attorney-client privilege, the attorney work product doctrine and any other applicable  
28



1 privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks  
2 information that is irrelevant or not reasonably calculated to lead to the discovery of admissible  
3 evidence. Howrey also objects to this Request on the ground that it is vague and ambiguous. Finally,  
4 Howrey objects to this Request to the extent that it seeks documents outside of its possession, custody  
5 or control. Subject to and without waiving the foregoing general and specific objections, Howrey  
6 responds as follows: Pursuant to Instruction No. 2 of the Subpoena, Howrey will not re-produce  
7 responsive documents that have already been produced to the DOJ or the SEC. Howrey will meet and  
8 confer with counsel for Mr. Roberts to discuss the production of additional relevant non-privileged  
9 documents, if any, responsive to Request No. 7.

10 Request No. 8:

11 ALL DOCUMENTS AND COMMUNICATIONS RELATED TO Arthur Matin.

12 Response to Request No. 8:

13 Howrey objects to Request No. 8 to the extent that it calls for the production of information  
14 protected by the attorney-client privilege, the attorney work product doctrine and any other applicable  
15 privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks  
16 information that is irrelevant or not reasonably calculated to lead to the discovery of admissible  
17 evidence. Howrey also objects to this Request on the ground that it is vague and ambiguous. Finally,  
18 Howrey objects to this Request to the extent that it seeks documents outside of its possession, custody  
19 or control. Subject to and without waiving the foregoing general and specific objections, Howrey  
20 responds as follows: Pursuant to Instruction No. 2 of the Subpoena, Howrey will not re-produce  
21 responsive documents that have already been produced to the DOJ or the SEC. Howrey will meet and  
22 confer with counsel for Mr. Roberts to discuss the production of additional relevant non-privileged  
23 documents, if any, responsive to Request No. 8.

24 Request No. 9:

25 ALL DOCUMENTS created by YOU in connection with, OR that formed ANY part of the  
26 basis of, ANY representation by YOU to the DOJ, SEC OR NYSE, whether written OR oral  
27 RELATED TO stock options.

1 Response to Request No. 9:

2       Howrey objects to Request No. 9 on the ground that it calls for the production of information  
3 protected by the attorney-client privilege, the attorney work product doctrine and any other applicable  
4 privileges. Howrey further objects to this Request to the extent that it is overbroad and seeks  
5 information that is irrelevant or not reasonably calculated to lead to the discovery of admissible  
6 evidence. Howrey also objects to this Request on the ground that it is overbroad as to time and scope.  
7 Subject to and without waiving the foregoing general and specific objection, Howrey responds as  
8 follows: Pursuant to Instruction No. 2 of the Subpoena, Howrey will not re-produce responsive  
9 documents that have already been produced to the DOJ or the SEC. Howrey is unaware of additional  
10 relevant non-privileged documents responsive to Request No. 9.

11  
12 Dated: November 19, 2007

HOWREY LLP

13  
14  
15 By: 

Robert E. Gooding, Jr.  
Roman E. Darmer  
David T. Bartels

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17 Attorneys for Custodian of Records  
18 HOWREY LLP  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF ORANGE )

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 2020 Main Street, Suite 1000, Irvine, California 92614.

On November 19, 2007, I served on the interested parties in said action the within:

**OBJECTIONS AND RESPONSES OF NON-PARTY HOWREY LLP TO SUBPOENA FOR THE PRODUCTION OF DOCUMENTS AND TESTIMONY**

by placing a true copy thereof in a sealed envelope(s) addressed as stated below and causing such envelope(s) to be deposited in the U.S. Mail at Irvine, California.

Einat Sandman  
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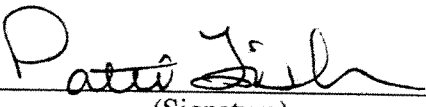
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☒ (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on November 19, 2007, at Irvine, California.

Patti Fisher  
(Type or print name)

  
(Signature)